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No. 99-224

Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES

CHARLES B. MILLER, SUPERINTENDENT OF THE PENDLETON CORRECTIONAL FACILITY, et al.,
Petitioners,

v.

RICHARD A. FRENCH, et al.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF OF *AMICI CURIAE*, THE ASSOCIATION OF STATE CORRECTIONAL ADMINISTRATORS AND THE CITY OF NEW YORK, IN SUPPORT OF INDIANA PETITIONERS

Michael D. Hess
Corporation Counsel of the City of New York

Leonard J. Koerner
Lorna B. Goodman
Counsel for Amicus Curiae the City of New York

100 Church Street
New York, NY 10007
(215) 788-0999

Sarah B. Vandenbraak*
Chief Counsel of the Pennsylvania Department of Corrections

Peter A. Hobart
Counsel for Amicus Curiae The Association of State Correctional Administrators

55 Utley Drive
Camp Hill, PA 17011
(717) 731-0444
* *Counsel of Record*

QUESTIONS PRESENTED

1. Do the federal courts retain the equitable power to stay the automatic stay provision of the Prison Litigation Reform Act ("PLRA")?

2. Is the automatic stay provision of the PLRA constitutional?

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INTEREST OF *AMICI CURIAE* [1]

The Association of State Correctional Administrators ("ASCA") is a professional association whose members consist of the directors of state Departments of Corrections, Puerto Rico, the United States Virgin Islands, and four large urban correctional systems (Cook County, Illinois; New York City, New York; Philadelphia, Pennsylvania; and Washington, D.C.). Through these fifty-eight top correctional administrators, ASCA seeks the improvement of correctional services and practices. As the top managers of state and large correctional agencies, ASCA's members are substantially affected by federal court orders managing prisons, and judicial determinations of motions to terminate prospective relief under the PLRA.

Amicus, the City of New York, is subject to intrusive federal consent decrees affecting its jails. It filed a PLRA termination motion almost four (4) years ago. The district court has issued an order blocking implementation of the automatic stay.

STATEMENT

Amici adopt petitioners' statement.

SUMMARY OF THE ARGUMENT

1. The Prison Litigation Reform Act ("PLRA") substantially changed the criteria for federal court management of state and local prisons. The PLRA also established a mechanism for courts

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[1] The parties have consented to the filing of this brief by ASCA. Letters indicating their consent have been filed with the Clerk of the Court. Pursuant to Rule 37.6 of the Rules of this Court, *amici* state that no counsel for a party has authored this brief in whole or in part, and that no person or entity, other than the *amici*, its members or its counsel, has made a monetary contribution to the preparation or submission of this brief.

to review and terminate previously entered injunctions and consent decrees that were no longer necessary to remedy existing constitutional violations. Recognizing that delayed determinations of PLRA termination motions could effectively deny state and local prison officials relief, Congress directed that federal courts should rule promptly on termination motions. In addition, Congress provided that the underlying consent decree or injunction would be stayed after sixty (60) or ninety (90) days if the court failed to enter a final ruling on the termination motion. Congress also granted all parties the right to seek appellate court relief to ensure a prompt ruling or to challenge an order blocking the automatic stay.

2. In reviewing this scheme, the Seventh Circuit correctly concluded that the PLRA does not grant a federal court the power to enter a stay of the PLRA's automatic stay provision. The plain language of the PLRA does not authorize a "stay of the stay." Rather, the PLRA simply authorized an interlocutory appeal of any order blocking or staying the automatic stay. The text of the PLRA and its legislative history make clear that this limited appellate remedy was enacted solely to provide an avenue for relief when a federal court refused to enforce the PLRA's automatic stay provisions. The fact that the PLRA does not explicitly preclude a federal court from "staying the stay" cannot be construed as a license for a court to invoke its "inherent common law equitable powers" to disregard the PLRA's clear statutory scheme.

3. The Seventh Circuit, however, mistakenly concluded that the PLRA's automatic stay provision is unconstitutional because it allegedly strips judicial decision-making power from a court. On the contrary, the PLRA simply stays a decree's effectiveness if the plaintiff fails to obtain within sixty (60) or ninety (90) days

a proper judicial determination that the injunction remains necessary to correct a constitutional violation. The PLRA is thus an appropriate exercise of Congress's power to establish remedies for constitutional violations and establish rules of procedures for the court. More importantly, the PLRA is carefully designed scheme to protect the Constitution's federal-state balance.

ARGUMENT

THE COURT OF APPEALS ERRED IN HOLDING THE AUTOMATIC STAY PROVISION OF THE PLRA UNCONSTITUTIONAL

The court of appeals erred in holding the PLRA's automatic stay provision unconstitutional under separation-of-powers principles. The PLRA, with its automatic stay, is a measured and appropriate legislative response to protect the sovereignty of the states in the management of their prisons. This Court should reverse the order of the lower court and uphold the automatic stay.

A. *The PLRA*[2]

The legislative history of the PLRA demonstrates that Congress sought to prevent needless interference with the

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[2] We recount the legislative history of the PLRA in some detail because of the statutory interpretation question this case presents. While we believe the statute is clear enough to make it unnecessary to resort to external interpretive aides, if the Court disagrees, we respectfully suggest that it should turn to that history ahead of the various canons proposed by the Department of Justice in order to resolve ambiguities. We likewise note that the history recounted here is all of the type that this Court has previously ruled it is proper to resort to in such a circumstance. *See Wright v. Mountain Trust Bank*, 300 US 440, 463-64 (1937) (resorting to Congressional committee reports); *McLean v. United States*, 226 U.S. 374, 380 (1912) (resorting to exposition on the floor by bill's sponsors); *Duplex Printing Press Co. v. Deering*, 254 U.S. 443, 475 (1921) (resorting to comparison of successive drafts); *United States v. Pfitsch*, 256 U.S. 547, 551 (1921)(resorting to debates in general to show common agreement on purpose).

administration of state and local prisons. Prior to the PLRA's consideration, various commentators had noted that federal prison litigation orders caused substantial public safety problems, wasted taxpayer dollars, and needlessly interfered with state and local governments.[3] Congress became concerned that some federal courts' judges were exercising overbroad supervisory powers—often without evidence of any ongoing federal violations—in prison conditions litigation.

In 1995, the House and Senate considered various bills to address these concerns.[4] In addition, in two hearings Congress

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[3] *See, e.g.*, DIIULIO, JOHN J., GOVERNING PRISONS: A COMPARATIVE STUDY OF CORRECTIONAL MANAGEMENT. (Collier Macmillan, 1987); John DiIulio, *A Philadelphia Crime Story*, Wall St. J., Oct. 26, 1994 at A21; Sarah Vandenbraak, *Bail Humbug!*, Pol'y Rev., Summer 1995, at 73-76; Michael W. McConnell, *Why Hold Elections? Using Consent Decrees to Insulate Policies From Political Change*, 1987 U. Chi. Legal F. 295.

[4] The PLRA began as various bills in the House and Senate. In the House, the provisions regulating prospective relief in prison conditions first appear in H.R. 554, 104 Cong. (1995), which was introduced by Congressman Canady on January 18, 1995, and referred to the Subcommittee on Crime of the House Judiciary Committee. The Chairman of the Subcommittee on Crime of the House Judiciary Committee, Congressman McCollum, then included them as Title III of H.R. 667, 104 Cong. (1995) (Title III), a broader bill on various aspects of incarceration that he introduced on January 25, 1995. The House Committee on the Judiciary marked up H.R. 667 a week later and sent it to the floor with an accompanying report, House Report No. 104-21 on H.R. 667, 104 Cong., 1st Sess. (Feb. 6, 1995) (Violent Criminal Incarceration Act of 1995, Title III) (hereinafter "House Report 21"), which contains important commentary on the provisions that ultimately became Section 802 of PLRA. The House passed H.R. 667 on February 10, 1995 and sent it to the Senate.

In the Senate, S. 400, 104 Cong. (1995) introduced by Senator Hutchison on February 14, 1995, contains the same early version of the PLRA provisions on prospective relief as H.R. 554 and H.R. 667. On July 27, 1995, shortly before the

heard from numerous witnesses who raised substantial concerns about the number of state prison systems and local jails under the control of federal courts; the longevity of court orders and consent decrees; the micro-management by federal judges; the

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August recess, the Senate held a hearing on various legislation relating to prison reform, including S. 400 and H.R. 667, chaired by Judiciary Committee Chairman Hatch and Senator Abraham. On September 26, 1995, Senator Abraham introduced S. 1275, 104 Cong. (1995), co-sponsored by Senators Hatch, Specter, Kyl, and Hutchison. The core provisions are found in section 2, which significantly modified prior versions of the prospective relief provisions. The following day, Majority Leader Dole introduced S. 1279, 104 Cong. (1995), cosponsored by Senator Hatch, Senator Abraham, the other Senate cosponsors of S. 1275, and additional Senators, including Senator Gramm, the Chairman of the Commerce-Justice-State Appropriations Subcommittee. S. 1279, 104 Cong. (1995) was a broader bill on incarceration (more similar in scope to H.R. 667). Section 2 of S. 1279 consisted of the prospective relief provisions contained in S. 1275, with a few additional modifications. On September 29, on the Senate floor, Senator Hatch then added the text of S. 1279 as an amendment to H.R. 2076, 104 Cong. (1995) the annual Commerce-Justice State appropriations bill, which had been reported to the floor by Senator Gramm's Subcommittee. Cong. Rec. S14,756-14,759 (daily ed. Sept. 29, 1995). The Senate passed H.R. 2076 that same day and requested a conference with the House. The conference reported an agreed upon version of the bill that retained the PLRA provisions added by the Senate with a few changes not relevant to this case. *See* H.R. Conf. Rep. No. 104-378, 104th Cong., 1st Sess. (Dec 1, 1995) at pp.166-67 (discussing purposes of the PLRA). Both Houses of Congress approved the conference version of the bill, but the President vetoed it (with no reference to the PLRA provisions). *See* Veto Message, Cong. Rec. H15,166-15,167 (daily ed. Dec. 19, 1995). A later version of the Commerce-Justice-State appropriations bill, still containing the same PLRA provisions, was then included in a final omnibus appropriations bill negotiated with the White House that ultimately became law. *See* H.R. 104-537 (Conf. Rep. To Accompany HR3019) 104th Cong., 2d Sess., pp. 69 et seq. (April 25, 1996); Cong. Rec. HR 1895-1898 (daily ed. March 7, 1996). House Report 104-537 provides that the controlling portions of H.R. No. 104-378 "remain controlling and are incorporated herein by reference."

unwarranted intrusion into state and local governments; the problems of courts not knowing "when to let go;" problems of defining when compliance has been reached; and the inappropriate ceding of the electorate's power to change policy through electing a new administration.[5]

Congressional sponsors responded to these concerns by restricting the scope of consent decrees and contested injunctions.[6] The PLRA explicitly required, for example, that all orders for prospective relief—including consent decrees—meet traditional injunction standards, that trial judges make written findings in support of these orders, and that prison population caps be a remedy of last resort. The PLRA also established a

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[5] *See Prison Reform: Enhancing the Effectiveness of Incarceration: Hearings on S. 3, S. 38, S. 400, S. 866 & H.R. 667 Before the Committee on the Judiciary, United States Senate*, 104th Cong. 1st Sess. (1995) at pp. 26-32 (testimony of William P. Barr, former Attorney General, United States Department of Justice); pp. 32-37 (testimony of Paul T. Cappuccio, former Associate Deputy Attorney General, United States Department of Justice); pp. 106-115 (testimony of O. Lane Cotter, Executive Director of the Department of Corrections for the State of Utah); pp. 37-45 (testimony of John J. DiIulio, Professor of Politics and Public Affairs, Princeton University); pp. 45-51(testimony of Lynne Abraham, District Attorney of Philadelphia); pp. 54-60 (testimony of Michael Gadola, Director, Office of Regulatory Reform, State of Michigan). *See also* pp. 51-52 (Resolution of December 3, 1994, National District Attorneys Association).

[6] *See, e.g.*, 141 Cong. Rec. S14,316-17 (daily ed. September 26, 1995) (remarks of Sen. Abraham) (making clear that he sought to curtail interference by the federal courts in the orderly administration of prisons, to enable the states to run prisons as they see fit unless there is a constitutional violation; to give substantial weight to any adverse impact on public safety or the operation of the criminal justice system caused by the relief; and to end the enforcement of consent decrees under which judges control the prisons literally for decades). *See also* 141 Cong. Rec. S14,418 (daily ed. Sept. 27, 1995)(remarks of Sen. Abraham); 141 Cong. Rec. H14,105 (daily ed. Dec. 6, 1995) (remarks of Rep. Canady).

scheme for promptly terminating court orders that were no longer necessary to remedy constitutional violations. Specifically, the PLRA allowed a government defendant to seek termination where the injunction was entered without specific findings (consistent with the traditional injunction standards), or where the injunction was over two years old. The prisoners, however, could prevent termination where they proved a current or ongoing constitutional violation.

As part of this prompt termination scheme, Congress recognized the compelling need for speedy judicial rulings. The PLRA thus contains a requirement that the court rule "promptly" on a motion to terminate. In addition, the PLRA established an "automatic stay," providing that the underlying prospective relief would be stayed if the motion to terminate was not finally adjudicated within thirty (30) days. The PLRA's sponsors made clear that this automatic stay provision was necessary to address the problem of judges delaying or refusing to rule on termination motions and the ineffectiveness of current mechanisms—such as mandamus actions—to address the problem. *See* House Report 21. The sponsors thus added the new concept of an "automatic stay" to motivate judges to "decide the motions and avoid having the stay automatically take effect." *Id.*

B. *Post-PLRA Litigation and Congressional Responses.*

Following the enactment of the PLRA, many jurisdictions moved to terminate long-standing court orders. *See e.g., Cagle v. Hutto*, 177 F.3d 253, 255 (4th Cir. 1999); *Taylor v. United States*, 181 F.3d 1017, 1021 (9th Cir. 1999); *Loyd v. Alabama Dept. of Corrections*, 176 F.3d 1336, 1344 (11th Cir. 1999). However, Congress quickly became aware that several judges had responded to motions to terminate by issuing orders blocking the implementation of the automatic stay, mostly on the ground

that in their view it was unconstitutional. *Hadix v. Johnson*, 933 F. Supp. 1360 (E.D. Mich. July 5, 1996); *Hadix v. Johnson*, 933 F. Supp. 1362 (W.D. Mich. July 3, 1996); *United States v. Michigan*, 989 F. Supp. 853 (W.D. Mich. July 3, 1996); *see also In Re Scott*, 163 F.3d 282, 284 (5th Cir. 1998) (describing September 25, 1996 Texas district court order blocking the automatic stay). States and localities had no success in obtaining judicial review of these orders either by way of appeal or mandamus. See *Hadix v. Johnson*, 144 F.3d 925, 932 (6th Cir. 1998) (recounting court of appeal's refusal to grant mandamus against further evidentiary hearings because of district court's failure to honor automatic stay); *Ruiz v. Johnson*, 178 F.3d 385, 388 (5th Cir. 1999) (describing order finding district court's refusal to rule immediately on motion to terminate not appealable and refusing to issue mandamus).

Congress also became aware that, rather than challenging this outcome, the Department of Justice was essentially supporting it. The Department was not arguing that the stay was in fact unconstitutional, but rather that it would be if "given a literal construction," and that the courts should therefore construe it to allow the courts to suspend it using their "inherent powers."[7]

In response, eighteen members of the Senate first wrote a sharp letter to the Attorney General urging her to reconsider the argument the Department was making on the automatic stay

[7] The same argument was made in the United States' Motion for Reconsideration in the *Ruiz v. Scott*, No. CIV.A. H-78-987 (S.D. Tex.), available online at 1996 WL 932104, *17-21.

on the ground that it essentially nullified the provision.[8] The Department, however, declined to change its view. Thereafter, on September 16, 1996, Senator Abraham gave a speech on the floor of the Senate decrying the Department's automatic stay interpretation as "ludicrous." 104 Cong. Rec. S10,576-77. He also stated his intention, either in connection with the next Commerce–Justice–State appropriations bill or in some other context, to clarify the law further so as to avoid any possibility that this misinterpretation might persist. *Id.* In addition, Senator Hatch and Senator Abraham took the unusual step of holding a Senate Judiciary Committee hearing a week later to examine PLRA implementation problems and possible solutions. *See Implementation of the Prison Litigation Reform Act: Hearings before the Senate and House Committees*, 104 Cong. (1996) (hereafter "*Implementation Hearing*").

Senator Hatch opened the hearing by noting the Department's filings and stating that if the Department's positions were accepted by the courts, they would have the effect of undermining the PLRA. *See Implementation Hearing (statement of Senator Hatch)*. The Department of Justice's representative, Associate Attorney General John Schmidt, responded by acknowledging that the Department had been urging judges to rule that they had the inherent power to "stay the stay," but that he did not expect this position to interfere with prompt resolution of motions to terminate prison conditions decrees. *See Implementation Hearing*, (statement of Mr. John Schmidt, Associate Attorney General, United States Department of Justice) He also raised concerns that the 30 day time period was too brief to permit fully discovery and hearings on termination motions. *Id.*

[8] Letter from Orrin Hatch, Senator, et al. to Janet Reno, Attorney General (July 23, 1996)(requesting changes in Dept. of Justice positions concerning PLRA interpretation).

At the same hearing, several state and local jurisdictions raised concerns about the delays in termination rulings, orders blocking implementation of the automatic stay, and the Department's "stay of the stay" position. Governor Engler of Michigan described the tremendous expense Michigan faced as a result of an order requiring the break-up of a prison system. Even when the court of appeals granted a discretionary stay, Michigan taxpayers paid five to ten million in construction delay expenses while the district court determined whether to terminate the consent decrees. *See Implementation Hearing*, (statement of Gov. Engler). Other witnesses echoed these concerns.

In addition, in response to Senator Abraham's specific inquiries about the effect of the Department of Justice's position that courts should be permitted to "stay the stay," witnesses expressed substantial concerns. They noted that it would undermine their ability to run prisons and that judicial delay would effectively deny them relief established by the PLRA. *See Implementation Hearing* (statement of Sen. Abraham) (statements of Laura Chamberlain and Sarah Vandenbraak).

C. *The 1997 Automatic Stay Amendments.*

The 104th Congress adjourned *sine die* the following week, so no further legislative action was taken at that time. On the first day of the next session, Senator Hatch introduced S. 3, the Omnibus Crime Control Act of 1997. Title IX of this legislation was designed to clarify various provisions of the PLRA so as to remove the underpinnings for the Department's arguments. Section 902(3) proposed two amendments to the automatic stay language. The Congress took no action on S. 3 itself. However, as Senator Abraham suggested in his September 16, 1996 floor

speech, key Members in both houses on the Judiciary and Appropriations Committees obtained the inclusion of a modified version of the language of § 902(3) of S. 3 was included in H.R. 2267, the FY 1998 Commerce-State-Justice Appropriations Conference Report. *See* Act of Nov. 26, 1997, Pub.L. No. 105-119, Title I, §123(b), 111 Stat. 2471.[9]

This language amended the automatic stay provision in four ways. First, it changed the provision's language to make it more consistent with the language of the bankruptcy automatic stay. *See* 18 U.S.C. § 3626(e)(2). This language was drawn verbatim from § 902(3) of S. 3. Second, it authorized an interlocutory appeal to challenge any order blocking the implementation of the automatic stay. 18 U.S.C. § 3626(e) (4). *This language is also drawn verbatim from § 902(3) of S. 3.* Third, Congress added a new provision authorizing a mandamus action to compel a prompt ruling on the termination motion. 18 U.S.C. §3626(e)(1). S.3 did not contain this provision, although it did have an analogous provision allowing would-be intervenors to seek mandamus to compel a ruling on their intervention motions. Finally, Congress added Section 3626 (e)(3) granting the courts the ability to postpone the automatic stay for sixty (60) days. *See* 18 U.S.C. § 3626(e)(3). This provision had no counterpart in S.3.

When the H.R. 2267 conference report came before the Senate for final passage, Senator Abraham outlined the reasons for these changes. *See* 143 Cong. Rec. S12,268-12,269 (daily ed. Nov. 9, 1997) (statement of Sen. Abraham). Specifically, he noted

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[9] Majority Whip Tom DeLay from the Appropriations Committee and Congressman Bill McCollum, the Chairman of the Subcommittee on Crime of the Judiciary Committee, led in this effort in the House. Appropriations Committee Member Kay Bailey Hutchison, Judiciary Committee Member Spencer Abraham, and Judiciary Committee Chairman Orrin Hatch led this effort in the Senate.

that "courts are supposed to rule promptly on motions to terminate these longstanding decrees" and that the automatic stay was intended to "discourage delay on such motions...." *Id.* He noted that courts have complained that the automatic stay "is impossible to comply with because it sets up an impossible timetable...." *Id.* He rejected this contention, noting that "the automatic stay imposes no requirement that they rule...." He further noted that the automatic stay "only provides that if they do not rule there is no order in effect until they do so." He made clear, however, that Congress was "giving the court the authority to extend the time an additional sixty days" in order to address this concern. *Id.*

In addition, Senator Abraham noted that the Department had contended that the automatic stay was not really automatic. *Id.* He explained that the modification in the language so as "expressly to model it on the bankruptcy automatic stay" was designed to rule out even more clearly the Department's interpretation that the court had reserved authority to block the stay. *Id.*

In the context of discussing an amendment to the PLRA termination provision, Senator Abraham also rejected any complaint that the termination scheme might cause prisoners to suffer constitutional violations. He noted that "if a prisoner is in imminent danger" of a violation of a federal right, that prisoner has "prompt and complete remedies through a new action filed in a state or federal court and preliminary injunctive relief." *Id.* This position rejected the Department's previously stated policy position that prisoners should not be required to file new actions but should be able to raise all constitutional matters in the context of the original case.[10]

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[10] *See* S. Hrg. 104-573, *Prison Reform: Enhancing the Effectiveness of Incarceration: Hearings on S. 3, S. 38, S. 400, S. 866 & H.R. 667 Before the Committee on the Judiciary, United States Senate*, 104th Cong. 1st Sess. (1995) (statement of John R. Schmidt, Associate Attorney General, U.S. Department of Justice) (noting the Department's policy objections to "[t]he Justice Department and other plaintiffs" having to "refile cases in order to achieve the objectives of the original order" and suggesting that there should be no "periodic disruptions of ongoing remedial efforts....").

Finally, Senator Abraham stated:

> "The amendments ... state explicitly that any order blocking the automatic stay is appealable, thereby ensuring review of the district court's action. Finally, they make clear that mandamus is available to compel a ruling if a court is simply failing to act on one of these motions." *Id.*

D. *The PLRA Does Not Permit a Federal Court to Stay the Automatic Stay.*

The Department of Justice has asserted that this Court should not reach the issue of the constitutionality of the automatic stay provision. It claims that this Court should find that courts have the inherent power to suspend the automatic stay where the prisoners show that a change in the "status quo" would cause irreparable injury and that the defendants' termination motion is unlikely to succeed on the merits. *See* United States' Petition for Certiorari at 12. It argues that such a construction is necessary to save the constitutionality of the automatic stay. These arguments are meritless.

The PLRA is clear and unambiguous. It provides that a stay is automatic and that, at most, a court may postpone its effect. *See* 18 U.S.C. 3626(e)(3). The PLRA's termination scheme does not authorize any suspension of this stay. The plain language of the statute demonstrates that no suspension is authorized.

The Department, relying on the maxim that statutes should not be construed in derogation of common law, suggests that this Court should interpret the PLRA as retaining this inherent equitable power. This rule of statutory construction, however, has no place here as the statute is not ambiguous. *See, e.g., Connecticut National Bank v. Germaine*, 503 U.S. 249, 254 (1992) ("When the words of a statute are unambiguous, then, this first canon is also the last: "judicial inquiry is complete." ").

The Department's argument is also contrary to this Court's precedent. Where, as here, federal legislation serves important national interests, this Court has refused to disregard clear statutory mandates through the application of equitable doctrines. *See Seminole Tribe of Florida v.Florida*, 517 U.S. 44, 53 (1996) ("Where Congress has created a remedial scheme for the enforcement of a particular federal right, we have, in suits against federal officers, refused to supplement that scheme with one created by the judiciary."); *McKennon v. Nashville Banner Publ'g Co.*, 513 U.S. 352 (1995) (holding that "unclean hands" doctrine does not apply to ADEA claims); *Perma Life Mufflers, Inc. v. International Parts Corp.*, 392 U.S. 134, 138 (1968) (holding that "unclean hands" defense does not apply in Sherman Act and Clayton Act Antitrust actions); *See also, INS v. Pangilinan*, 486 U.S. 875, 883 (1988) (courts of equity bound by statutory requirements); *Aircraft & Diesel Equip. Corp. v. Hirsch*, 331 U.S. 752,754 (1947) (holding that equitable intervention was unwarranted given the statute's "clear purpose and intent"); *Smith Land & Imp. Corp. v. Celotex*, 851 F.2d 86, 90 (3d Cir. 1988) (refusing to apply "unclean hands" doctrine to CERCLA actions because it would "not comport with congressional objectives").

The Department's interpretation that the federal courts may suspend the stay in order to maintain the "status quo" flies in the face of Congress's clear intent to prevent unnecessary federal court control over state and local prisons. It also fails to

account in any way for the unusual nature of this "status quo." A federal court's exercise of equitable powers against a state government is itself an extraordinary event. This Court has repeatedly recognized the momentous implications of such actions and imposed special obligations on federal courts to prevent unnecessary federal control. Far from warranting an inference that federal courts *must* have the power to preserve this extraordinary "status quo," our Constitution (with its carefully devised system of dual sovereignty) suggests the opposite presumption: that the States ordinarily run their own institutions.

The PLRA is designed to ensure prompt adjudications and prevent courts from holding onto decrees beyond the time necessary to remedy the constitutional violation. The legislative record in this case establishes conclusively that Congress did not intend for district courts to be able to suspend the PLRA's automatic stay provisions. Thus, to the extent that there is any ambiguity in the statute, this Court should interpret the statute consistent with the clear intent of the legislative sponsors.

Indeed, this case vividly demonstrates that Congress's fears were well founded. Here, the injunction was entered in 1985. Since that time, this Court has issued numerous opinions limiting civil rights claims by prisoners.[11] In fact, the district

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[11] *See, e.g. Lewis v. Casey*, 518 U.S. 343 (1996) (overruling *Bounds v. Smith* and holding that prisoner must show actual prejudice in an access to courts claim); *Sandin v. Conner*, 515 U.S. 472 (1995) (limiting challenges to disciplinary confinement); *Farmer v. Brennan*, 511 U.S. 825 (1994) (requiring actual knowledge of the threat against the inmate in order for state actor to be liable for an inmate-on-inmate assault); *Wilson v. Seiter*, 501 U.S. 294 (1991) (rejecting a "totality of the circumstances" standard and making clear that a "deliberate indifference standard applies to 8th Amendment claims); *Turner v. Safley*, 482 U.S. 78 (1987) (refusing to apply the strict scrutiny test to prisoner claims); *O'Lone v. Shabazz*, 482 U.S. 342 (1987) (same).

court's finding of a constitutional violation was premised on the "totality of the circumstances" test this Court later rejected. *Compare Wilson v. Seiter*, 501 U.S. 294 (1991) (rejecting argument that "overall conditions" can rise to the level of cruel and unusual punishment when no specific deprivation of a single human need exists) *with French v. Owens*, 538 F. Supp. 910 (1982) (applying a "totality of the circumstances" test).

More importantly, the transcript of the temporary restraining order hearing demonstrates that the court and the parties had long ago lost touch with the case. At the hearing, the court conceded that it no longer had copies of the court orders establishing the injunctions against the prison. (Transcript of Temporary Restraining Order, July 10, 1997 at 17-18). Likewise, counsel had filed no motions for enforcement of the injunctions or for contempt sanctions since 1988.

Even presuming *arguendo* that the PLRA somehow permits a federal court to suspend the automatic stay, the record here completely fails to meet the applicable preliminary injunction standards. Contrary to the Department of Justice's position, traditional preliminary injunction standards are no longer sufficient to authorize preliminary injunctive relief in prison conditions litigation. *See* 18 U.S.C. 3626 (a)(2)(creating new requirements for preliminary injunctions).

Here, the district court entered injunctive relief that had the effect of requiring state officials to abide by the terms of a twelve-year old decree for several more years. Under these circumstances, the grant of preliminary injunction constituted prospective relief as defined by the PLRA. 18 U.S.C. § (g)(7). (defining "prospective relief"). Thus any such order itself was required to meet the PLRA limits. 18 U.S.C. § 3626 (a). At the very least, the court was required to enter an order that minimized any adverse effect on the defendants. For example,

the court could have ordered expedited discovery and hearings to ensure a prompt determination. The court could have determined whether the prisoners had a good faith basis for claiming constitutional violations as to all provisions of the injunctions, or whether some could be terminated before the final determination on the remaining provisions. Instead, however, the court simply allowed the injunctions to remain in effect without any showing whatsoever that these provisions remained necessary to remedy anything.

This Court should hold that the PLRA does not authorize federal judges to enter orders blocking implementation of the automatic stay. This Court should not hold that courts have the inherent power to "stay the stay" as such an interpretation is clearly contrary to the PLRA's provisions and congressional objectives. If, however, this Court determines that the courts have the power to enter a stay of the automatic stay, this Court should make clear that the PLRA's limitations on prospective relief apply to any such orders.

E. *The Automatic Stay Does Not Violate Separation of Powers Principles.*

The court of appeals concluded that the automatic stay provision violated the separation-of-powers doctrine. This conclusion is incorrect for the reasons set forth by the Indiana Petitioners, and the *amici* briefs filed by the States and the members of Congress. In addition, ASCA respectfully asserts that the automatic stay carefully preserves separation-of- powers principles.

Section 5 of the Fourteenth Amendment provides that "[t]he Congress shall have the power to enforce, by appropriate legislation, the provisions of this article." U.S. CONST. Amend XIV, § 5. Section 5 is itself a "positive grant of legislative

power." *See Katzenbach v. Morgan*, 384 U.S. 641, 651 (1966); *Ex Parte Virginia*, 100 U.S. 339, 345-46, (1880). This grant of power is "remedial" and not "substantive," in that it grants Congress wide latitude to create *remedies* to enforce constitutional rights but not to define the scope of the underlying right. *See City of Boerne v. Flores*, 521 U.S. 507 (1997). Thus, "[i]t is for Congress in the first instance to 'determine whether and what legislation is needed to secure the guarantees of the Fourteenth Amendment,' and its conclusions are entitled to much deference." *Id.* (quoting *Katzenbach*, 384 U.S. at 651).

Under its Fourteenth Amendment remedial powers, Congress passed the Civil Rights Act that created broad civil remedies, including injunctive relief, for constitutional violations committed pursuant to state action. *See* 42 U.S.C. 1983. In this litigation, the prisoners specifically invoked Congress's civil rights legislation as grounds for relief. *See French v. Owens*, 538 F. Supp. 910, 911 (1982) (noting that the federal court had jurisdiction pursuant to 28 U.S.C. 1343 over the prisoners' claims pursuant to 42 U.S.C. 1983 and 28 U.S.C. §§ 2201 and 2202) Having chosen to rely on a federal statute to get into court in the first place, the plaintiffs can hardly complain that they should not also be bound by Congress's later statute limiting injunction remedies available to prisoners.

Clearly, Congress's broad remedial powers also permit it to limit the Fourteenth Amendment remedies that it alone created. Here Congress chose a careful scheme that addressed particular problems—never-ending consent decrees, overly-intrusive court orders, and interference with state and local governments—while carefully permitting prompt and effective federal court remedies for genuine constitutional deprivations. A legislative sensitivity to the sovereignty of states is precisely what this Court endorsed in *City of Boerne v. Flores*, 521 U.S. 507 (1997) (holding that RFRA was not a proper exercise of

Congress's Section 5 enforcement power because it contradicts vital principles necessary to maintain separation-of-powers and the federal-state balance).

Although Congress has tremendous legislative discretion to limit civil rights remedies, here Congress chose a scheme that supports this Court's repeated direction to confine federal court remedial orders in prison-conditions cases to measures that are necessary to correct unconstitutional conditions. *See, e.g., Lewis v. Casey*, 518 U.S. 343, 357 (1996) ("[t]he remedy must of course be limited to the inadequacy that produced the injury-in-fact that the plaintiff has established"); *Bell v. Wolfish*, 441 U.S. 520, 562 (1979) ("[t]he inquiry of federal courts into prison management must be limited to the issue of whether a particular system violates any prohibition of the Constitution or, in the case of a federal prison, a statute."). [12] The principles of comity

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[12] The same doctrines have also long been applied in school desegregation cases. Federal courts' power to restructure the operation of state and local governmental entities is not plenary and may be exercised only on the basis of a constitutional violation. *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 16 (1971). *See also Milliken v. Bradley*, 418 U.S. 717, 744 (1974) (providing that inter district school desegregation remedial order was inconsistent with the equitable principle that the scope of the remedy is determined by the nature and extent of the constitutional violation); *Milliken v. Bradley*, 433 U.S. 267, 282 (1977) ("[F]ederal-court decrees must directly address and relate to the constitutional violation itself. Because of this inherent limitation upon federal judicial authority, federal-court decrees exceed appropriate limits if they are aimed at eliminating a condition that does not violate the Constitution or does not flow from such a violation."); *Board of Educ. v. Dowell*, 498 U.S. 237, 248 (1991) ("A federal court's regulatory control . . . [should] not extend beyond the time required to remedy the effects of past [Constitutional violations]."); *Missouri v. Jenkins*, 515 U.S. 70 ("A proper analysis of the District Court's orders . . . must rest upon their serving as proper means to the end of restoring the victims of discriminatory conduct to the position they would have occupied in the absence of that conduct and their eventual restoration of state and local authorities to the control of a school system that is operating in compliance with the Constitution.").

and federalism require the courts to show particular restraint in exercising their remedial jurisdiction in the prison context. *See Preiser v. Rodriguez*, 411 U.S. 475, 491-92 (1973) (holding that "it is difficult to imagine an activity in which a State has a stronger interest, or one that is more intricately bound up with state laws, regulations, and procedures, than the administration of its prisons."). [13]

Quite simply, inmates in constitutional prisons are not entitled to have a federal court, rather than the appropriate state or local authorities, supervise the conditions of confinement. *Lewis v. Casey*, 518 U.S. 343, 360 n. 7 (1996). *See also, Columbus Bd. of Educ. v. Penick*, 439 U.S. 1348, 1353 (1978) (holding that "[c]ourts have no power to presume and remediate harm that has not been established"). By enacting the PLRA, Congress established an orderly system for identifying and terminating consent decrees and injunctions that were no longer necessary to remedy a constitutional violation. The PLRA's limits on the remedial powers of the federal courts in prison-conditions cases are thus an appropriate means to ensure that the control of state and locals prisons is returned to democratically-elected state governments.

Congress has thus issued careful protections for state and local governments in accordance with the Constitution's system of dual sovereignty, federalism, and comity. The Constitution establishes a system of "dual sovereignty" where the states surrendered enumerated powers to the federal government but retained a "residual and inviolable sovereignty." *Printz v. United States*, 521U.S. 898,909 (1997); *Gregory v. Ashcroft*, 501 U.S. 452, 457, (1991). The Tenth Amendment protects those

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[13] *See also Procunier v. Martinez*, 416 U.S. 396, 404-05 (1974); *Bell v. Wolfish*, 441 U.S. 520, 546-48, 562 (1979); *Turner v. Safley*, 482 U.S. 78, 84-85 (1987).

powers that have not been granted to the federal government by reserving those powers to the states. *Printz v. United States*, 521 U.S. 898(1997).[14] "Under our federal system, the states possess the primary authority for . . . enforcing the criminal law." *United States v. Lopez*, 514 U.S. 549,561 n.3 (1995). Consequently, the PLRA protects the states' ability to manage their prisons, a fundamental police power specifically reserved to the states through the Tenth Amendment. *See also, Alden v. Maine*, 119 S. Ct. 2240, 2275 (1999)(stating that the people of a state have "the sole, exclusive and inherent right of governing and regulating the internal police of the same").

Congress's enactment of the PLRA helped ensure that the government officials responsible for administering state and local prisons would retain their right to enact new policies when new political administrations took office. Prior to passage of the PLRA, many prison injunctions and consent decrees, like the modifications to the original the injunction issued in this case in 1985, contained no termination date and purported to bind future political administrations to particular policy choices. This practice has been severely criticized as inconsistent with the republican form of government. *See* Michael W. McConnell, *Why Hold Elections? Using Consent Decrees to Insulate Policies From*

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[14] *See also Buffington v. Day*, 78 U.S. 113,126 (1871) ("the general government, and the states, although both exist within the same territorial limits, are separable and distinct sovereignties, acting separately and independently of each other within their respective spheres. The [federal government] in its appropriate sphere is supreme; but the States within limits of their powers not granted; or in the language of the Tenth Amendment, 'reserved,' are as independent of the general government as that government within its sphere is independent of the states.").

Political Change, 1987 U. Chi. Legal F. 295.[15] Other courts have criticized the practice of litigants using consent decrees to evade a state's own system of checks and balances.[16]

For these reasons, the PLRA contains provisions for the periodic review of any consent decree or injunction order to prevent long-term orders that hamstring subsequent political administrations. *See* 18 U.S.C. § 3626 (a)(1)(B). Congress's enactment of the PLRA is certainly "necessary and proper" legislation to protect the Constitution's dual-sovereignty structure, the Tenth Amendment powers of the states, and their

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[15] *See also, Bates v. Johnson*, 901 F. 2d 1424, 1426 (7th Cir. 1990) ("A state's right to make fresh political choices about domestic policy as political officials turn over may be an implied term in a consent decree, given the norm that public officials may not bind their successors. If as a matter of state law an official lacks authority to commit the state to maintain a rule beyond his term of office, that official cannot accomplish through a consent decree what he has no power to accomplish, period.").

[16] *See Leslsz v. Kavanagh*, 807 F.2d 1243, 1253 (5th Cir.) ("If as appellees argue a federal court may take almost any action 'consistent with' the 'spirit' of the applicable constitutional law and the decree itself, there is no limitation on the scope of the court's power"); *Kasper v. Board of Election Comm'r of Chicago*, 814 F.2d 332, 340 (7th Cir. 1987) ("district judges should be on the lookout for attempts to use consent decrees to make end runs around the legislature"); *Dunn v. Carey*, 808 F.2d 555, 560 (7th Cir. 1986) ("Because a consent decree's force comes from agreement rather than positive law, the decree depends on the parties' authority to give assent . . . . Some rules of law are designed to limit the authority of public officeholders, to make them return to other branches of government or to the voters for permission to engage in certain acts. They may chafe at these restraints and seek to evade them."); *Overton v. City of Austin*, 748 F.2d 941, 956-957 (5th Cir. 1984) (refusing to approve consent decree where city officials sought to create new election system contrary to state law).

"republican form of government" as required by the Guarantee Clause.[17]

The automatic stay is a critical element of this scheme to ensure that federal court injunctions do not needlessly remain in effect due to judicial delay. *Amici* recognize that many federal judges issue prompt rulings on PLRA motions to terminate. However, a significant number of judges do not. *See e.g., French v. Duckworth*, 178 F.3d 437, 449 (1999) (Easterbrook, J., dissenting from the denial of rehearing en banc) (noting that once the district court declared the automatic stay unconstitutional two years ago it "has yet to take a single step" in ruling on the PLRA termination motion and the "process that is supposed to be rapid drags on with no end in sight"). *Ruiz v. Estelle*, 5th Cir. Order, Dec. 16, 1998 (directing district court to enter a final order by March 1, 1998 on PLRA termination motion filed in September 1996); *See also, Harris v. Reeves*, 946 F.2d 214 (3d Cir. 1991) (noting the district court's 2 ½ year delay in ruling on an intervention motion challenging a prison population cap).

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[17] The sovereignty of the state governmental structure also finds protection in the Guarantee Clause of the Constitution. In that clause, the federal government pledges to "guarantee to every state a republican form of government." U.S. Const. art. IV, § 4. This agreement to preserve the "republican form of government" contemplated that the government officials who ran governmental institutions would be subject to the will of the electorate. *See* Deborah Jones Merritt, *The Guarantee Clause and State Autonomy: Federalism for a Third Century*, 88 Col. L. Rev. 1, 23-29 (1988). The Supreme Court has recognized that a "republican form of government" contemplates "the right of the people to choose their own officers for governmental administration, and pass their own laws." *In re Duncan*, 139 U.S. 449, 461 (1891).

When a judge fails to rule promptly on a PLRA termination motion, it can have tremendously adverse consequences for state and local governments. At the time the PLRA passed, thirty-nine state prison systems operated under some federal court order or injunction. *See Overhauling the Nation's Prisons: Hearings Before the Senate Judiciary Committee*, 104 Cong. (1995) (statement of John J. DiIulio, Professor of Politics and Public Affairs at Princeton). Some of these orders have far-reaching operational and financial implications. Texas prisons, for example, cannot exceed 95% of their design capacity. *See Ruiz v. Estelle*, 161 F.3d 814, 825-27 (5th Cir. 1998) (describing prison capacity limits contained in consent decrees that have the effect of requiring Texas to build more prisons); *Alberti v. Klevenhagaen*, 46 F.3d 1347, 1352 (5th Cir. 1995) ("After years of litigation, in 1985, the State entered into a stipulation, requiring it to limit its prison population to ninety-five percent of capacity.") Given that Texas's prototypical prisons cost $46 million each to construct, the financial implications of this prison population cap are astounding. Under these circumstances, any delay in deciding a PLRA intervention motion would leave Texas without a definitive answer as to whether it must keep building these high-cost prisons.

The court orders in Michigan also require the break up of the Southern Michigan State Prison and the construction of new prisons. Even though Michigan filed a PLRA termination motion on June 10, 1996, it still awaits a final ruling in the district court.[18] The court of appeals granted a discretionary stay after the district blocked implementation of the automatic stay. Nevertheless, Michigan faced five to ten million in construction

[18] Some aspects of the consent decrees were recently terminated by agreement. However, major portions of the consent decrees remain in effect.

delay costs while awaiting a final decision on its termination motion. *See Implementation Hearing* (statement of Gov. Engler).

For more than 20 years incredibly intrusive consent decrees have governed New York City's jails.[19] These require *inter alia* that the City supply a federal court monitor with an office, three full-time correction officers, a car "no more than one-step below" that of the Commissioner of Corrections and a space in a parking garage. These accoutrements alone cost the City approximately $300,000 per year. In May 1996, the City moved for termination. The district court granted the motion, finding that the prisoners did not assert that the current conditions were unconstitutional. Nevertheless, the court of appeals remanded the case for evidentiary hearings. The district court has now blocked the automatic stay (based on the court's "inherent power") and the final hearings have not been scheduled. *Benjamin v. Kerik, 1999 U.S. Dist. Lexis 19694*. Thus, almost four (4) years after filing a PLRA termination motion, the City remains under federal supervision even though there have been no findings of a constitutional violation.

Under the circumstances, the automatic stay scheme chosen by Congress (which has the constitutional power to establish procedures for federal courts) is a measured response that respects the role of the judiciary. The automatic stay, in effect, makes clear to litigants that if they want to maintain a federal court order under circumstances that legitimately cast doubt on the continued need for a federal injunction, then they

[19] For example, the consent decrees contain provisions requiring that "[n]either coffee, tea nor milk shall be pre-sweetened;" that certain areas of the jail be cleaned with a solution consisting of ¼ cup Boraxo to a gallon of water; and that mops be stored in a particular manner. *See, Implementation Hearing* (statements of Governor Engler and Laura Chamberlin).

must prove within ninety (90) days that they meet the requirements for that injunction.

The complaints that ninety (90) days is insufficient time to decide a termination motion are unpersuasive. If a prison is continuing to operate unconstitutionally, the federal court and counsel should be maintaining substantial involvement in the case. This Court should not presume that a federal judge and class-action lawyer (with ethical responsibilities to properly represent the prisoner class) would allow continued constitutional violations. Rather, if the federal injunction was proving inadequate to prevent constitutional violations, then contempt sanctions or further modifications of the injunction would be necessary. In such a situation, counsel and the court would certainly have a familiarity with the specific constitutional issues even if the defendants moved to terminate some or all provisions of the injunction. Ninety (90) days would certainly be adequate time to resolve the motion, particularly given the court's ability to order expedited discovery.

This case, however, epitomizes the more common situation. Here, comprehensive injunctions had been issued long ago. No enforcement motions or contempt sanctions had been sought by counsel for almost a decade. Indeed, the district court judge no longer had a file or copies of injunctions binding the prison administration. Quite simply, the case was dormant for a decade but the injunctions lived on.

Once Indiana filed to terminate the injunctions, the prisoners' attorney filed a response asserting that there were constitutional violations occurring at the prison. Although the Federal rules require that such an allegation be reasonably investigated and supported in fact and law, the district court did not require any specificity. *See* F.R.C.P. 11. Instead, the prisoners' lawyer was granted free-ranging discovery to inspect the

prisons, searching for possible constitutional claims.[20] Not surprisingly, the PLRA termination motion has yet to be decided. Certainly, the prisoners have no incentive to proceed to a hearing; they continue to enjoy the full benefits of the injunctions without any showing that they are still needed to prevent constitutional violations.

There is a compelling need for ensuring prompt resolution of PLRA termination motions. *Amici* respectfully assert that the automatic stay scheme chosen by Congress is a valid exercise of its legislative authority. If, however, this Court decides otherwise, *amici* respectfully urge this Court to adopt appropriate procedures to ensure prompt determinations. Quite simply, appellate remedies—that grant deference to the district court's stay determination—are inadequate to ensure the timely termination of injunctions that have outlived their need. At the very least, this Court should exercise its general supervisory powers over the district courts to establish firm and enforceable time limits for ruling on PLRA termination motions.

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[20] Such free-ranging discovery seems inconsistent with discovery procedures normally employed in suits against state officials. State officials are usually not required to submit to the burdens of discovery until there has been a preliminary determination that there is a colorable legal claim. *See generally Crawford-el v. Britton*, 523 U.S. 574, 597-600 (1998) (noting in an action for injunctive relief and damages the need for trial judges to determine, prior to discovery, whether the prisoner has a "viable"action in order to protect government officials from unnecessary or burdensome discovery and court proceedings); *Chagnon v. Bell*, 642 F.2d 1248, 1266 (D.C. Cir. 1980) (observing that "uncontrolled discovery" relating to unsubstantiated claims can impose "an undue burden on the time and resources of public officials and their agencies.")

CONCLUSION

For these reasons, this Court should affirm the portion of the Seventh Circuit Court of Appeals' holding that courts do not have authority to "stay the stay," and should reverse the portion of the opinion holding that the automatic stay is unconstitutional.

Respectfully submitted,

Sarah B. Vandenbraak*
Chief Counsel of the
Pennsylvania Department
of Corrections

Peter A. Hobart
Counsel for Amicus Curiae
The Association of State
Correctional Administrators
55 Utley Drive
Camp Hill, PA 17011
(717) 731-0444
* *Counsel of Record*

Michael D. Hess
Corporation Counsel of the
City of New York

Leonard J. Koerner
Lorna B. Goodman
Counsel for Amicus Curiae
the City of New York
100 Church Street
New York, NY 10007
(215) 788-0999